

REMARKS/ARGUMENTS

This amendment is in response to the Office Action mailed on June 4, 2004. No Claims have been amended or canceled. Claims 1, 3, 6, 8, 9, 11, 12 and 16 are pending. Reconsideration of the above-identified application in view of the following remarks is respectfully requested.

Claims 1, 3, 6, 8, 9, 11, 12 and 16 stand rejected under 35 USC §103(a) as being unpatentable over U.S. Patent No. 5,968,044 to Nicholson et al. (hereinafter referred to as Nicholson) in view of U.S. Patent No. 6,098,802 to Asa et al (hereinafter referred to as Asa) and still further in view of U.S. Patent No. 5,873,462 to Nguyen et al (hereinafter referred to as Nguyen). The Examiner maintains that Nicholson discloses a surgical fastener in the form of a disposable portion 100. The Examiner states that Nicholson suggests placing the fastener in a sterile tray. But the Examiner admits that Nicholson does not even attempt to teach or suggest the structure of this tray.

The Examiner is relying on Asa and Nguyen for the teaching of a tray for the sterile storage of a disposable portion. The Examiner further relies on Asa for the teaching of the wells in the tray being isolated to prevent cross contamination. The Examiner also further relies on Nguyen for the teaching of scoring a film to allow for controlled breaking of the film. The Examiner concludes that it would have been obvious to one of ordinary skill in the art to provide Nicholson's nondescript tray with isolated wells based on the teachings of Asa to prevent cross-contamination of the fasteners and with a film on top of the tray with a score on the film over each well based on the teachings of Nguyen.

Independent claims 1 and 8 of the present invention require that a film be placed over the wells such that accessing one of the surgical fasteners in one of the wells can be achieved while maintaining the sterile environment in the remaining wells, regardless if any of the other wells have been opened. In other words, should the film be penetrated to access one of the surgical fasteners in one of the wells, the sterile environment in the remaining wells is maintained.

Nicholson discloses a bone fastener and the entire disclosure is directed to structural details of the bone fastener. Nicholson states that his invention also includes a surgical fastener kit, which includes an expandable member that has an axial channel and an outer

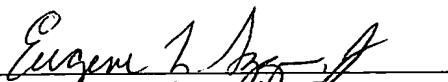
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surface for engaging an inner surface of the bone opening. The kit also includes an element for insertion into the axial channel. This element has a projecting surface for engaging the inner surface of the axial channel. The kit also includes a holder for engaging with the expandable member. The holder is capable of maintaining the expandable member in position with the bone opening. The kit may also include a grasper for the suture, a drill and a retrieval device. Nicholson states that the kit is preferably encased in a sterile tray or other receptacle for use by an operator at a site. Thus, it is abundantly clear that Nicholson's sterile tray is intended to hold an expandable member, an element for insertion into the axial channel, and maybe even a grasper, a drill and a retrieval device. In fact, there is no mention whatsoever of the tray holding the bone fasteners. Therefore, there is no need to provide a plurality of wells as all of these devices are going to be used during the surgical operation. Thus, one of ordinary skill in the art would not have been motivated to modify Nicholson's tray so that it has a plurality of wells. Additionally, there would be no need to provide a weakness in the film over each well.

Thus, the combination of Nicholson, Asa and Nguyen fails to teach or suggest the present invention as exemplified by amended independent claims 1 and 8, which require that the sterile environment in the remaining wells be maintained regardless of whether any of the other wells have been opened.

For the above reasons, Applicant respectfully requests that a timely Notice of Allowance be issued in this case.

Respectfully submitted,

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